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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In Re:) Bankruptcy Case
12 WAYNE D. WILLIAMS and) No. 05-65863-fra13
13 ANTOINETTE M. WILLIAMS,)
14 _____ Debtors.) MEMORANDUM OPINION

15 This matter comes before the Court on the Debtors' application
16 for an order confirming their proposed plan of reorganization pursuant to
17 Chapter 13 of the Bankruptcy Code. The Court has determined that the
18 Debtors have not sustained their burden of proof with respect to
19 confirmation, and orders that confirmation be denied, without prejudice.

20 I. BACKGROUND

21 According to documents filed with the Court by the Debtors and
22 colloquy at the confirmation hearing, Debtor Wayne D. Williams does
23 business as a "consultant" who assists people seeking to develop real
24 property. He asserts that he does not perform actual hands-on
25 construction work, and that he charges less than \$500 for each project
26 undertaken. He does business under the name of "Wayne D. Williams, Land

1 Subdivision and Land Development." Former businesses include Williams
2 Construction, apparently a sole proprietorship, and DevCo, Inc., a
3 corporation.

4 Exhibit D-2 to the petition, the Debtors' "financial review of
5 non-farming business," projects annual net income of \$31,953, on gross
6 sales or receipts of \$61,000. Debtors' statement of financial affairs
7 shows earnings of \$14,000 in 2004, and \$18,920 in 2005 through July 15,
8 2005. The Trustee objected to confirmation on the grounds that the
9 Debtors have failed to make plan payments, and had failed to provide the
10 Trustee with information required to analyze Mr. Williams's business
11 prospects. At the confirmation hearing on October 20, 2005, the Debtors
12 were given 10 days within which to bring plan payments current, and an
13 additional opportunity to gather the business information required by the
14 Trustee. A second confirmation hearing was held on November 17, 2005.
15 The Trustee opposed confirmation, asserting that the information
16 contained in the Debtors' Exhibit D-2 and statement of affairs, and bank
17 statements provided to the Trustee (but not placed in evidence) were
18 inconsistent. In addition, the Trustee takes the position that the
19 Debtor is required to obtain a license to operate his business from the
20 Oregon Construction Contractors Board, but has failed to do so. Mr.
21 Williams, for his part, insists that he is not required to obtain a
22 contractor's license.

23 II. DISCUSSION

24 A. Feasibility Requirement

25 A debtor has the burden of proving that a proposed plan
26 satisfies the statutory requirements for confirmation contained in 11

1 U.S.C. § 1325. In re Ho, 274 B.R. 867, 883 (9th Cir. BAP 2002). A
2 business operating in bankruptcy must comply with state and local laws
3 and regulations, unless enforcement of those laws and regulations is
4 preempted by the Bankruptcy Code. See In re Baker & Drake, Inc., 35 F.3d
5 1348, 1353-55 (9th Cir. 1994). Section 1325(a)(6) requires a showing that
6 "the debtor will be able to make all payments under the plan and to
7 comply with the plan." If the debtor's ability to make payments is
8 dependent on a trade or business which requires a license, the debtor
9 must establish that he has, or at the very least qualifies for, the
10 required license. The Court will not confirm a plan based on income from
11 a business operating in violation of applicable business regulations. In
12 the absence of a license, the Court may decline to approve the plan, or
13 approve a plan which requires acquisition of the required license within
14 a reasonable period of time.

15 B. Contractors Licensing in Oregon

16 Oregon law regarding the regulation of construction contractors
17 is contained in ORS Chapter 701. Specifically, any person who qualifies
18 as a "builder" under the statute, and who is not subject to described
19 exemptions, is required to obtain a license from the Oregon Construction
20 Contractors Board. Licensees are required to pay an annual fee of \$260,
21 maintain insurance, and a bond, usually in the sum of \$15,000.

22 A "builder" subject to the statute is defined by ORS 701.005(2)
23 as a "person who, in the pursuit of an independent business, undertakes
24 or submits a bid, to construct, alter, repair, improve, remove or
25 demolish a structure or to perform any work in connection with the
26 construction, alteration, repair, improvement, removing or demolition of

1 a structure." [Emphasis added.] Oregon courts have held that one who acts
2 as a "consultant" with respect to building projects, even if the
3 consultant does no hands-on work, qualifies as a builder under this
4 statute. Remodeling Consultants, Inc. v. Builders Board, 19 Or. App.
5 794, 528 P.2d 1373 (1974). While it must be said that the record in this
6 case is not altogether clear, the Court infers from the colloquy at the
7 confirmation hearing that the consulting work performed by Mr. Williams
8 generally involves construction of structures, as opposed to being
9 limited to financial or land use aspects of property development. It
10 follows that he qualifies as a builder under Oregon law, and must obtain
11 a license from the Contractors Board unless he qualifies for an
12 exemption.

13 C. The "\$500" Exemption

14 ORS 701.010(4) provides:

15 **ORS 701.010 Application.** The Construction Contractors
16 Board may adopt rules to make licensure optional for
17 persons who offer, bid or undertake to perform work
18 peripheral in construction, as defined by
19 administrative rule of the Construction Contractors
20 Board. The following persons are exemption from
21 licensure under this chapter:

22 * * *

23 (4) A person working on one structure or project,
24 under one or more contracts, when the aggregate price
25 of all of that person's contracts for labor, materials
26 and all other items is less than \$500 and such work is
of a casual, minor or inconsequential nature. This
subsection does not apply to a person who advertises
or puts out any sign or card or other device which
might indicate to the public that that person is a
contractor. [Emphasis added.]

25 Mr. Williams maintains that he qualifies for an exemption under
26 the foregoing statute.

1 The exemption is clearly intended to exclude from the license
2 and bonding requirements individuals who perform casual or day labor on a
3 particular project. As the Trustee points out, Mr. Williams must be
4 working on over 120 projects a year in order to generate the gross sales
5 claimed in his Exhibit D-2. The statute is unclear as to whether a
6 builder may work on multiple projects at the same time and qualify for
7 the exemption. Even assuming that this in itself would not disqualify a
8 builder from claiming the exemption, there is nothing to suggest that Mr.
9 Williams's work is of a "casual, minor or inconsequential nature." If,
10 in fact, he is advising clients on how to develop their property, obtain
11 building assistance, and other fundamental decisions, exactly the
12 opposite is so. Moreover, as the Trustee has pointed out, there is
13 evidence that the Debtor is holding himself out as a contractor.

14 III. CONCLUSION

15 On the evidence before it, the Court concludes that Mr.
16 Williams is a builder under Oregon law, and is not subject to any
17 applicable exemption. It follows that he is required to obtain and
18 maintain a license from the Oregon Construction Contractors Board in
19 order to carry out the business supporting his plan of reorganization.
20 Confirmation of the Debtors' plan of reorganization is denied, without
21 prejudice. The Debtors may, within 90 days of the date hereof:

22 1) submit a modified plan of reorganization based on a business
23 not requiring a license, or

24 2) resubmit the existing plan after applying for and receiving
25 a builder's license from the Contractors Board, or

26 3) resubmit the existing plan along with evidence acceptable to

1 the Trustee and the Court that the Debtor has been advised by the
2 Construction Contractors Board, after having submitted to it all relevant
3 particulars concerning Debtor's business, that he is not required to
4 obtain a builder's license.

5 The foregoing constitutes the Court's findings of fact and
6 conclusions of law. A separate order will be entered consistent with
7 this memorandum opinion.



FRANK R. ALLEY, III
Bankruptcy Judge